

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

COMPLAINT OF CHRISTOPHER L.)	
LILLY AGAINST SOUTH ELKHORN)	CASE NO. 8794
SERVICE COMPANY)	

O R D E R

On February 8, 1983, Mr. Christopher L. Lilly, Secretary, Clemens Heights Neighborhood Association ("Association"), filed a complaint on behalf of the Association and member-residents of the Clemens Heights Subdivision against the South Elkhorn Service Company ("South Elkhorn"). A petition signed by 68 of the member-residents was filed with the letter of complaint. The complaint questioned South Elkhorn's annual advance billing policy, rates and penalties in excess of those specified in the filed tariff, and inadequate sewage treatment. On February 11, 1983, copies of the complaint and petition were forwarded to South Elkhorn with a request that South Elkhorn respond to the complaint. No response was received. Subsequently, by Order dated March 29, 1983, South Elkhorn was ordered to appear before the Commission on April 27, 1983, to give testimony regarding the complaint. The hearing was held as scheduled in the Commission's offices at Frankfort, Kentucky. Mr. Ted Osborne, President of

South Elkhorn, appeared with his attorney, Mr. Sidney Marshall, Jr. Mr. Lilly appeared both as attorney for the Association and as a resident of the Clemens Heights Subdivision.

Rates and Penalties

The South Elkhorn plant was constructed in 1968 prior to Commission jurisdiction over sewer utilities. South Elkhorn's tariff showing its existing rates was accepted by the Commission on January 22, 1975. South Elkhorn has not applied for an adjustment in rates since that time. South Elkhorn's tariff provides for annual single-family residential rates of \$63 for the Robinwood and Waverly Subdivisions and \$75.60 for Grasmere Subdivision and other users, and an annual rate of \$200 for churches. Rates are also prescribed for apartments and businesses; however, South Elkhorn has no customers in those classes. Mr. Osborne testified that residents in the Robinwood and Waverly Subdivisions are being charged \$60 per year, Grasmere residents are charged \$72 per year and churches are charged \$100 per year. There are no apartments, but duplexes are charged \$100 per year per unit.¹

Since 1975, South Elkhorn has extended its lines to serve the Clemens Heights, Plantation, Hidden Springs and High Plains

¹Transcript of Evidence ("T.E."), April 27, 1983, p. 59-62.

Subdivisions. Residents in these areas are charged \$100 per year, except Plantation residents who are charged \$72 per year.²

South Elkhorn stated that its rates do not cover costs of providing sewer service and indicated that possible sale of South Elkhorn to the City of Lexington was its reason for not applying for a rate increase.³

South Elkhorn filed an operating agreement, between South Elkhorn and Hi-Acres Development Company, dated February 10, 1977,⁴ which was to be made a part of the deed for each piece of property sold in the Clemens Heights Subdivision. The operating agreement provides for an annual sewage rate of \$105 for each single-family residence beginning when a deed is delivered to the purchaser, or sewage is discharged into the lines, or a water meter is installed, whichever occurs earlier, and thereafter on the anniversary date. The agreement further provides for a lien on the individual parcels of developed property plus 10 percent late payment penalty and 1-1/2 percent interest per month on late payments and the costs of collection.

The South Elkhorn tariff does not specifically allow advance billing but states that sewer rental fees are due upon

²T.E., pp. 69, 70.

³T.E., p. 63.

⁴South Elkhorn, Exhibit No. 2.

presentation of the mailed statement and become delinquent 30 days thereafter. A 10 percent late payment penalty and 6 percent annual interest are shown for single-family residences and apartments but not for businesses and other users (churches, laundromat, car wash). South Elkhorn relied upon the operating agreement as authority for advance annual billing, rates, penalty and interest.

The Association objected to annual billing, billing for service prior to receipt of such service, payment of a penalty and interest on bills rendered in advance of service, and rates and interest in excess of those allowed by the tariff. Mr. Lilly stated that quarterly billing after service is rendered would be satisfactory.⁵ Mr. Lilly has not actually been charged a penalty or interest, although these provisions are stated on his bills, nor is he aware of others who have paid these charges.⁶ South Elkhorn has collected some penalties and interest, but did not know the amounts. Customers are billed once a year on their deed anniversary dates, but are allowed to pay however they wish. Bills are not considered delinquent until a year from the billing date.⁷ South Elkhorn wishes to continue billing once each year, but would allow payments to be made monthly or quarterly.⁸

⁵T.E., pp. 29, 30.

⁶T.E., pp. 27-29, 55, Lilly Exhibit No. 2.

⁷T.E., pp. 71, 72.

⁸T.E., pp. 64, 72, 73, 78.

Utility Construction

South Elkhorn has expanded its sewage treatment plant and extended sewers to serve the Clemens Heights, Plantation, Hidden Springs, and High Plains Subdivision.⁹ This construction is not considered to be in the ordinary course of business and should have received Commission approval prior to construction.

Adequacy of Service

South Elkhorn appeared to be in violation of 807 KAR 5:071, Section 5(1), at several times throughout calendar year 1982 by polluting the South Elkhorn Creek. Currently South Elkhorn's sewage treatment plant is being upgraded and has a new operator.¹⁰ With the plant upgrading and the employment of a new operator, South Elkhorn now appears to be in compliance with 807 KAR 5:071, Section 5(1), and is providing adequate service to its customers.

FINDINGS

The Commission, having reviewed the evidence of record and being advised, is of the opinion and finds that:

(1) South Elkhorn is charging unauthorized rates to some of its customers. Residents of Robinwood and Waverly Subdivision should be charged \$63 per year. Residents of Grasmere, Clemens Heights, Plantation, Hidden Springs and High Plains Subdivisions should be charged \$75.60 per year, and churches should be charged

⁹ T.E., pp. 69, 70.

¹⁰ T.E., pp. 74, 75.

\$200 per year. Duplexes should be charged per unit according to the rate for the particular subdivision in which they are located.

(2) The operating agreement between South Elkhorn and the developer of the Clemens Heights Subdivision contains provisions which are in conflict with or contrary to Commission policy and regulations and South Elkhorn's filed tariff. In instances where such conflict exists, the Commission policies and regulations prevail. South Elkhorn should file revised tariff sheets setting out its rates, rules, and regulations consistent with KRS Chapter 278, Chapter 807 of the Kentucky Administrative Regulations and the findings and orders herein.

(3) South Elkhorn should develop a standard billing procedure for all customers whereby bills are rendered quarterly after service is received based upon the approved rates. The billing procedure should include the dates bills are to be mailed and the date due after which the late payment penalty will apply.

(4) Commission policy prohibits dual and/or compounded penalties on past due bills. South Elkhorn should delete the interest provision in its tariff and apply the 10 percent late payment penalty uniformly to all customers according to the following:

When a penalty is assessed due to late payment, any payment received shall first be applied to the bill for service rendered. In subsequent bills, a penalty shall not be assessed on an unpaid penalty. A penalty shall be assessed only once on each delinquent billing.

(5) South Elkhorn should file information regarding the status of any sale negotiations with the City of Lexington. Further, South Elkhorn should be cautioned that, prior to any sale or transfer of its assets, application must be filed with the Commission for authorization to do so.

(6) The complaint of poor service and inadequate sewage treatment involving the alleged pollution of the South Elkhorn Creek by South Elkhorn has been resolved, and South Elkhorn is now providing adequate service to its customers as required by 807 KAR 5:071, Section 5(1).

(7) KRS 278.020 requires jurisdictional utilities to request Commission approval prior to performing any construction not in the ordinary course of business. In the future, South Elkhorn should receive Commission approval prior to performing construction. The record indicates that South Elkhorn has neither sought nor received approval in the past. The Commission will tolerate no further violations of KRS 278.020 by South Elkhorn and will consider the levying of penalties against South Elkhorn in accordance with KRS 278.990 should there be any further performance of regulated construction without Commission approval.

IT IS THEREFORE ORDERED that South Elkhorn shall cease the charging of unauthorized rates and shall charge the rates specified by its approved tariff as stated in Finding No. 1 herein.

IT IS FURTHER ORDERED that South Elkhorn shall develop a standard billing procedure for all customers for quarterly billing after service is rendered, including the dates bills will be mailed and the due date after which the late payment penalty shall apply.

IT IS FURTHER ORDERED that South Elkhorn shall delete the interest provision from its tariff and shall apply the late payment penalty allowed by its tariff uniformly to all customers in accordance with Finding No. 4 herein.

IT IS FURTHER ORDERED that within 30 days of the date of this Order, South Elkhorn shall file revised tariff sheets setting out its rates, rules and regulations in accordance with KRS Chapter 278, Chapter 807 of the Kentucky Administrative Regulations and the findings and orders herein.

IT IS FURTHER ORDERED that within 30 days of the date of this Order South Elkhorn shall file sufficient data to determine the status of any sale negotiations with the City of Lexington.

IT IS FURTHER ORDERED that South Elkhorn shall file with the Commission a copy of its monthly "Discharge Monitoring Report," which it currently files with the Division of Water of the Natural Resources and Environmental Protection Cabinet for a period of 1 year from the date of this Order to insure compliance with 807 KAR 5:071, Section 5(1).

IT IS FURTHER ORDERED that South Elkhorn shall obtain the approval of this Commission prior to performing any future construction which is governed by KRS 278.020.

IT IS FURTHER ORDERED that South Elkhorn be and it hereby is advised that the Commission will consider levying penalties against South Elkhorn in accordance with KRS 278.990 should there be any further occurrences of performing regulated construction without Commission approval.

Done at Frankfort, Kentucky, this 23rd day of June, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary